



AF / JFLV

FI-52

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Günther Beisel
Serial No: 10/511,518
Filed: May 9, 2005
For: AGENT FOR PRODUCING A SENSATION OF SATIETY AND FOR
WEIGHT LOSS
Examiner: Michael C. Henry
Art Unit: 1623

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

S I R:

Applicant hereby requests a two-month extension of the original shortened statutory period set by the Notice of Appeal of July 29, 2008. Enclosed is a credit card payment form in the amount of \$245 in payment of the government fee for a two-month extension of time.

12/03/2008 HDESTA1 00000008 10511518

01 FC:2402
02 FC:2252

270.00 OP
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This appeal is taken from the Final Action mailed march 25, 2008.

Real Party in Interest

The real party in interest in the above-identified application is:

Schutte/Reicjel GbR
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Germany

Related Appeals and Interferences

There are no related appeals or interferences of which Applicant is aware regarding the above-identified application.

Status of Claims

Claims 5, 8-11 and 13 have been canceled. Claims 1-4, 6, 7, 12, 14 and 15 are pending in the application and are subject to the present appeal. Claims 1-4, 6, 7, 14 and 15 stand rejected under 35 U.S.C. 102(b) over GB 1302275 to Young et al. Claim 12 stands rejected under 35 U.S.C. 103(a) over Young et al.

Status of Amendments After Final Rejection

No amendment after final was filed.

Summary of the Claimed Subject Matter

The claimed invention will now be summarized with reference to the drawings being made by way of reference numerals.

Independent Claim 1

The claimed invention recites an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic

polymer is present as an aluminum salt (see page 3, lines 4-7).
The agent also contains active ingredients (see page 11, lines 10-11 and page 12, line 10 - page 13, line 4).

Independent Claim 7

The claimed invention also recites an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt (see page 3, lines 4-7). The agent is present in the form of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders (see page 10, lines 16-18).

Independent Claim 12

The claimed invention further recites a method for producing a satiety effect and for weight loss (see page 13, line 21 - page 14, line 2). The method includes providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt (see page 3, lines 4-7), and ingesting the agent (see page 10, lines 12-15).

Independent Claim 14

The claimed invention additionally recites a method for producing a composition for producing a satiety effect and for weight loss (see page 14, lines 4-6). The method includes adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, for producing the composition (see page 3, lines 4-7).

Independent Claim 15

The claimed invention still further recites a method for producing a composition for regulating cholesterol balance (see page 14, lines 6-8). The method includes adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, for producing the composition (see page 3, lines 4-7).

Grounds of Rejection to be Reviewed on Appeal

The following grounds are presented for review:

Whether claims 1-4, 6, 7, 14 and 15 are anticipated under 35 U.S.C. 102(b) over Young et al.

Whether claim 12 is unpatentable under 35 U.S.C. 103(a) over Young et al.

ArgumentThe Rejection of Claims 1-4, 6, 7, 14 and 15under 35 U.S.C. 102(b):

Independent claims 1, 7, 14 and 15 stand and fall together and are argued together below.

In rejecting claims 1-4, 6, 7, 14 and 15, the Examiner stated the following in the final rejection:

"In claim 1, applicant claims an "Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients. Young et al. disclose applicant's agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein aluminum ions (active ingredients) are incorporated fruit material that is encapsulated (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Young et al.'s agent is a reconstructed or simulated food product that comprises fruit pulp or puree encapsulated in a skin of aluminum alginate gel (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that "intended use" of a composition or product, e.g., for producing a satiety effect for weight loss, does not further limit claims drawn to a composition or product. See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161. Furthermore, since Young et al.'s agent consist of the same gel of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Young et al.' s

agent should inherently provide the same satiety or weight loss effect as applicant's agent. In addition, Young et al.'s disclose that their alginate gel can behave as a semipermeable (page 2, col. 1, lines 14-19). This implies that the alginate gel is porous. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Young et al. disclose applicant's agent, wherein the agent is present in compressed form (encapsulated form) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner considers Young et al.'s encapsulated form of the said agent a compressed form, since said agent is shaped (compressed) into an encapsulated form. Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Young et al., since Young et al. agent contains aluminum alginate (see page 1, col. 1, lines 27-41; see page 1, col. 1, lines 11-22 and claim 1). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Young et al., since Young et al. agent is present as aluminum alginate (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claim 6 is drawn said agent according to claim 1, wherein the agent also contains active ingredients that include vitamins, trace elements, or medicinal compounds. Young et al. disclose applicant's agent, wherein the agent also contains incorporated aluminum or calcium ion (trace elements or active ingredients) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, wherein the agent is formed of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Young et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Young et al., since Young et al. also use said agent contains aluminum alginate (see col. 1, lines 27-41)."

Young et al. disclose edible products. These edible products have a certain caloric content and thus do not lead to a weight reduction. When one looks to the examples of Young et al., fruit pulp, which itself already has high sugar content, is mixed with sugar and encapsulated. When one considers such an encapsulated product one cannot speak of a satiety effect since sugar containing products work opposite thereto and generally increase appetite.

In contrast, in the presently claimed invention the anionic polymer is not provided for encapsulation, but instead forms on itself the inventive agent. This agent can, if desired, be encapsulated. The inventive product can also be compressed, as discussed in the paragraph beginning on line 8 of page 10, which with the product of Young et al. is not possible since the product would burst.

The alginates of Young et al. are merely used as shielding. There is no disclosure that the layer of alginates can contain additional materials. The aluminum or calcium ions of Young et al. are not active ingredients, but rather are part of the alginate layer (alginate = set of alginate acid with metal ion, for example, calcium or aluminum); also when considering the

description disclosed by the reference, it is submitted that those skilled in the art would not be listing calcium or aluminum as active ingredients.

It is believed apparent that the presently claimed invention and Young et al. have completely different objectives.

Most important, in the presently claimed invention the anionic polymer is not used for encapsulation of other materials. This is not disclosed by Young et al.

The Examiner's position that the Young et al's composition would inherently provide satiety effect and weight loss finds no support in the teachings of Young et al. Furthermore, the encapsulation of Young et al. is different from the presently claimed invention. Young et al. provide a "tough skin" or "skin of calcium" so that when chewed the product simulates real fruit (see page 1, line 12). Thus, Young et al. do not disclose a product that can be compressed as can the presently claimed invention.

Furthermore, applicant submits that the Examiner's position that aluminum is an active ingredient is incorrect. In the passage cited by the Examiner (page 1, col. 1, lines 27-41) in the

reference there is no mention that aluminum is an active ingredient. Instead, what this passage states is that via calcium or aluminum ions, which are contacted with an alginate sol in drop form, the alginate skin is formed. By this step, above all, the aluminum alginate, which then envelopes the fruit pulp, is formed first. There is no mention by Young et al. that aluminum is an active ingredient.

It is further incorrect to count the aluminum ions of the aluminum alginate as trace elements. Since the aluminum ions form counterions to the anionic groups of the alginate polymer, they cannot simply be separated and then used as trace elements, because the principal of charge neutrality of compounds also holds true in this situation - trace elements that act as active ingredients must be readily accessible to the body without problems.

Furthermore, in the present invention the term "trace elements" is naturally understood to only encompass trace elements for dietary or nutritional scientific purposes. Not included are trace elements for, for example, cosmetic or mineralogical purposes. A broadening of this definition would require a purposeful misinterpretation of the invention. Trace elements in

the dietary or nutritional purposes do not normally include aluminum. As support for this applicant encloses the first four pages of Report 532 of the World Health Organization discussing Trace Elements in Human Nutrition. As is apparent from the table of contents, aluminum is not listed as a trace element for human nutrition.

Thus, applicant submits that Young et al. do not disclose the presently claimed invention.

Thus, it is submitted that the rejection of claims 1-4, 6, 7, 14 and 15 under 35 U.S.C. 102(b) over the above-discussed reference is in error.

The Rejection of Claim 12 under 35 U.S.C. 103(a):

In rejecting claim 12, the Examiner stated the following in the final rejection:

"In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

Young et al. disclose applicant's composition consisting of porous gel or foam of at least one anionic polymer (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Furthermore, Young et al. disclose that said composition is edible. Young fails to disclose that the composition can provide a satiety effect. However, Young et al.'s composition should also produce a satiety effect based on the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer."

The arguments presented above in connection with claim 1 apply equally to claim 12. Young et al. do not teach ingesting an agent consisting of a dried, porous gel or foam of at least one

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anionic polymer, wherein the agent is present as an aluminum salt, for producing a satiety effect and for weight loss.

Thus, it is submitted that the rejection of claim 12 under 35 U.S.C. 103(a) over the above-discussed reference is in error.

Conclusion

Accordingly, in view of the above considerations, it is Applicant's position that the Examiner's rejection of claims 1-4, 6, 7, 14 and 15 under 35 U.S.C. 102(b) and his rejection of claim 12 under 35 U.S.C. 103(a) are in error and should be reversed.

The amount of \$270.00 to cover the fee for filing an appeal brief is being charged as per attached form PTO-2038. Any additional fees or charges required at this time in connection with this application should be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

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Dated: December 1, 2008

CERTIFICATE OF MAILING

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Date: December 1, 2008

Claims Appendix

1. Agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients.

2. Agent according to Claim 1, wherein the agent is present in compressed form.

3. Agent according to Claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer.

4. Agent according to Claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof.

6. Agent according to Claim 1, wherein the agent contains vitamins, trace elements, or medicinal compounds as active ingredients.

7. Agent for producing a satiety effect for weight loss

consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, wherein the agent is present in the form of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders.

12. A method for producing a satiety effect and for weight loss, comprising: providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt; and ingesting the agent.

14. A method for producing a composition for producing a satiety effect and for weight loss, the method comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, for producing the composition.

15. A method for producing a composition for regulating cholesterol balance, the method comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, for producing the composition.

Evidence Appendix

1. Trace Elements in Human Nutrition, World Health Organization,
Geneva, 1973, 4 pages.

This report contains the collective views of an international group of experts and does not necessarily represent the decisions or the stated policy of the World Health Organization.

WORLD HEALTH ORGANIZATION

TECHNICAL REPORT SERIES

No. 532

TRACE ELEMENTS IN HUMAN NUTRITION

Report of a WHO Expert Committee

WORLD HEALTH ORGANIZATION

GENEVA

1973

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PRINTED IN SWITZERLAND

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IN HUMAN NUTRITION**

Geneva, 9-17 April 1973

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Related Proceedings Appendix

There are no related proceedings.